

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:14-cv-009-FDW**

**ROBERT E. BAKER,**

**Plaintiff,**

**vs.**

**RICHARD THOMAS, et al.,**

**Defendants.**

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**ORDER**

**THIS MATTER** is before the Court on initial review of Plaintiff's Complaint, filed under 42 U.S.C. § 1983, (Doc. No. 1), and on Plaintiff's Motion to Appoint Counsel, (Doc. No. 3). On January 23, 2014, in response to Plaintiff's Application to Proceed without Prepayment of Fees, the Clerk entered an order waiving the initial filing fee and directing monthly payments to be made from Plaintiff's prison account. (Doc. No. 8).

On June 19, 2013, Plaintiff filed a Section 1983 complaint which the Court dismissed for failure to state a claim for relief as he had not set forth sufficient facts to demonstrate medical indifference under the Eighth Amendment. (Civil Case No. 5:13-cv-96, Doc. No. 4). On September 6, 2013, Plaintiff filed another complaint in this Court, which this Court dismissed on October 18, 2013, on the ground that it was "virtually indistinguishable" from Plaintiff's prior complaint. (Civil Case No. 5:13cv135, Doc. No. 9). Plaintiff has now filed a third complaint, again raising the same claim as in his two previous actions. This Court will dismiss this action for the same reasons that the Court dismissed the complaint on October 18, 2013—Plaintiff's claim has already been dismissed for failure to state a claim.

The Court further hereby puts Plaintiff on notice that, pursuant to 28 U.S.C. § 1915(g):

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Under Section 1915(g) when and if Plaintiff reaches three strikes he will be required to pay the full filing fee thereafter unless he can show that he is under imminent danger of serious physical injury.


#### **IV. CONCLUSION**

For the reasons stated herein, this action will be dismissed.

**IT IS, THEREFORE, ORDERED** that:

1. Plaintiff's Complaint, (Doc. No. 1), is **DISMISSED**.
2. Plaintiff's Motion to Appoint Counsel, (Doc. No. 3), is **DENIED** as moot.

Signed: February 4, 2014

  
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Frank D. Whitney  
Chief United States District Judge

